Supreme Court, U.S.
FILED
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No. 00-1813

IN THE SUPREME COURT OF THE UNITED STATES

ZEINAB ALI,
Petitioner,
v.
ALAMO RENT-A-CAR, INC.,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

RESPONDENT'S OBJECTION
TO MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*
BY THE AMERICAN JEWISH CONGRESS, ET AL.

Respondent, Alamo Rent-A-Car, Inc., by and through undersigned counsel, and pursuant to Supreme Court Rule 37(5), hereby objects to the Motion for Leave to File Brief *Amici Curiae* and Brief *Amici Curiae* of the American Jewish Congress, American Jewish Committee, Agudath Israel of American and the Anti-Defamation League in Support of Petition for Writ of Certiorari, by stating as follows:

REASONS FOR OBJECTION

Respondent objects to the Motion for Leave to File Brief *Amici Curiae* as the Brief offers no new or "relevant matters" which would aid the Court in determining whether to grant certiorari. Supreme Court Rule 37(1) specifically warns that the filing of *amicus curiae* briefs which do not serve this purposes are "not favored." It is for this reason, along with Counsel for *Amici Curiae's* failure to preview the arguments to be submitted that express

consent not given for filing a supporting brief. Supreme Court Rule 37(5).

In their proposed brief, *Amici* argue that the law is unsettled as to whether alleged discrimination must have an economic detriment with respect to the "compensation, terms, conditions or privileges of employment" in order to be actionable under 42 U.S.C. §2000e-2(a)(1). (*Amici* Brief at 3). *Amici* assert that the Fourth and Eight Circuits narrowly interpret the statute as being "economic-based," and request that this Court clarify the issue of whether an economic interest is a necessary component of a Title VII claim.

Suffice it to say that the issue contemplated by *Amici* is irrelevant to the proposed question presented in the Petition, and largely ignores the admissions by Petitioner at the district and circuit court level that she suffered neither an economic nor any other detriment to the terms and conditions of her *employment*. (Respondent's Brief at 5-7); *Ali v. Alamo Rent-A-Car, Inc.*, 246 F.3d 662, 664, fn. 2 (4th Cir. 2000). Further, *Amici's* interpretation of the Fourth Circuit's ruling is clearly a stretch. The Fourth Circuit neither considered, reviewed, nor discussed the alleged economic issue raised by *Amici*. In fact, the word "economic" appears nowhere in Fourth Circuit's decision.

The standard for Title VII claims does not turn on an "economic" or "non-economic" analysis as suggested, but rather whether the employer's practice affects the "compensation, terms, conditions, or privileges of employment" or whether the practice "deprive[s] any

individual of employment opportunities or otherwise adversely affect his status as an employee." 42 U.S.C. § 2000e-2(a)(1) & (2). This standard was reiterated just last term by this Court in *Clark County School District v. Breeden*, 121 S.Ct. 1508 (2001)(misidentified by *Amici* as "Carson County v. Breedon" at 5).

Contrary to *Amici's* suggestion that this Court needs to clarify this well settled standard, Respondent notes that this Court, has, in fact, recently addressed the alleged distinction in *Burlington Industries v. Ellerth*, 524 U.S. 742 (1998). Although discussed in the context of an employer's affirmative defense, the Court recognized that actionable (or tangible) employment actions are not limited to those involving an economic detriment. *Id.* at 762. This Court further provided some guidance on what amounts to an adverse employment action (none of which was alleged by Petitioner), noting that:

> The concept of a tangible employment action appears in numerous cases in the Courts of Appeals discussing claims involving race, age, and national origin discrimination, as well as sex discrimination. Without endorsing the specific results of those decisions, we think it prudent to import the concept of a tangible employment action for resolution of the vicarious liability issue we consider here. A tangible employment action constitutes a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits....
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> * * * *
>
> Tangible employment actions are the means by which the supervisor brings the official power of the enterprise to bear on subordinates. A tangible employment action requires an official act of the enterprise, a company act. The decision in most cases is documented in official company records, and may be subject to review by higher level supervisors....The supervisor often must obtain the imprimatur of the enterprise and use its internal processes....

Id.

In all, when stripped of the argument that the law is somehow unsettled in this area, *Amici's* Brief contains nothing more than hyperbole and inflammatory rhetoric about "back of the bus" segregation practices and sarcastic remarks intended to take the alleged acts of the supervisor in the underlying case far beyond what was ever pled.

For the foregoing reasons, Respondent respectfully objects.

Respectfully submitted,

KAREN A. KHAN*
TIMOTHY W. ROMBERGER
KHAN ROMBERGER PLLC
2300 Clarendon Boulevard
Suite 401
Arlington, VA 22201
(703) 516-0270
Counsel for Respondent

*Counsel of Record

CERTIFICATE OF SERVICE

I, Karen A. Khan, hereby certify that three true and accurate copies of Respondent Alamo Rent-A-Car, Inc.'s Objections to Motion for Leave to File Brief *Amicus Curiae*, were mailed, first class postage prepaid, on this 30th day of July 2001, to:

MARC D. STERN
15 East 84th Street
New York, NY 10028
Counsel of Record for Amici Curiae
American Jewish Congress
American Jewish Committee
Agudath Israel of America
Anti-Defamation League

WOODLEY B. OSBORNE
Osborne & Deutsch
Suite 550
1666 Connecticut Avenue, N.W.
Washington, D.C. 20009-1067
Counsel of Record for Amici Curiae
American-Arab Anti-Discrimination Committee
Council on American-Islamic Relations
Arab American Institute
American Muslim Council
National Employment Lawyers Association

ERIC SCHNAPPER
University of Washington
School of Law
1100 N.E. Campus Parkway
Seattle, WA 98105
Counsel of Record for Petitioner

VICTOR M. GLASBERG
KELLY M. BALDRATE
Victor M. Glasberg & Associates
121 S. Columbus Street
Alexandria, VA 22314
Counsel for Petitioner

By:

KAREN A. KHAN
Counsel for Respondent